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SUBJECT: TURKMENISTAN: CHANGES IN FINAL CONSTITUTION
INCLUDE SOME RECOMMENDATIONS FROM INTERNATIONAL COMMUNITY

REF: ASHGABAT 1100

¶1. (U) Sensitive but unclassified. Not for public Internet.

¶2. (SBU) SUMMARY: Post conducted a comparative analysis of the July draft and the final adopted Turkmen Constitution to determine what changes had been made. The final document appears to have incorporated some changes that correlate to recommendations the diplomatic community made to bring the final document closer to international standards. In addition, there were a number of changes that improve the language of the text and lay the groundwork for democratic progress, if related legislation is adequately revised and implemented. END SUMMARY.

¶3. (SBU) Comparative analysis of the July 22 draft and the September 27 final version of the Constitution of Turkmenistan revealed that before its adoption, about 20 textual additions or deletions had been included. Some of the revisions were the result of individual ministry working group suggestions and public dialogue, according to government sources. The final text also appears to include changes meant to address some of the approximately 25 recommendations made by the diplomatic community, in a document the UNDP passed to Institute for Democracy and Human Rights Director Shirin Akhmedova on August 20 (reftel).

¶4. (SBU) There are six changes in the constitution's final published text that appear to directly address specific international recommendations:

-- Article 19 previously stated that fundamental human rights and liberties are inviolable and inalienable. The international community suggested that "fundamental human rights" be changed to "all human rights." In response, the word "fundamental" was deleted and now reads "human rights and liberties are inviolable and inalienable."

-- Article 29 previously spoke of a right to information provided it was not a state or official or commercial secret. The international community said state or official secrets should be defined. In response, the article now reads that

citizens have a right to information provided it is not a state or other information protected by law

--Article 31 text on restrictions regarding the types of political parties that can be formed, deleted the term "social inequality", which the international community said lacked definition in this context.

--Article 34 deletes the phrase "forced labor is prohibited except as envisaged by law."

--In Article 35, the term "rational" in relation to the use of free time was deleted, in response to confusion regarding its definition.

--Article 52 text regarding the qualifications of a presidential candidate no longer contains language requiring a candidate to have worked in "branches of the national economy and having achieved high authority, acknowledged to be suitable for election, who can participate in the election of the President of Turkmenistan and able to be elected President of Turkmenistan." New wording mandates that the candidate should have worked in "state organs, public unions, enterprises, institutions, organizations."

15. (SBU) A number of other textual changes may have been made:

--In Article 6, new text was added stating that if Turkmenistan signs an international agreement and the norms of the agreement are different from Turkmenistan's law, the

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international treaty takes precedence.

--Article 10 previously stated that Turkmenistan develops its economy striving for a market economy based on private, state or other forms of ownership. The words "state or other forms of ownership" have been deleted.

--Article 16, which stated that the Turkmen manat was to be the only currency of the realm, and protected by Turkmen law, was deleted entirely, possibly out of concern connected to the widespread use of the US dollar.

--Article 24 described the conditions under which a citizen could be detained or arrested, based on the decision of a court, and now contains new text that also permits detention or arrest "with the sanction of the public prosecutor."

--Article 37 deals with environmental protection. A sentence stating "every citizen has the right to a safe environment" has been added.

--In Articles 53 and 63, responsibility for delineating administrative-territorial lines within the country was taken from the president and given to the Mejlis (parliament) which already had authority over national border delineation issues.

--Article 58 on the process of selecting an acting president if something happens to the president was altered from "a deputy cabinet minister will be appointed", but now reads "temporary fulfillment of duties are to be vested in" one of the deputy cabinet ministers. The change is a curious one, as its wording remains passive and sheds no more light on the opaque process by which an acting president would be chosen, or even by whom.

--The text of Article 108 has been re-crafted to state that not just lawyers, but also "other persons and organizations provide judicial assistance to citizens and organizations," which will legitimize foreign entities and non-governmental organizations who currently provide such assistance.

--Text was deleted in both Articles 103 and 113 that barred sitting judges and prosecutors from involvement in political

activities, such as participation in a political party or organization.

--Text was removed in Article 111 that limited the Prosecutor General's authority to enforce Turkmen law to Turkmen territory. There may have been some desire to assure his authority over Turkmen citizens and entities abroad, leading to the deletion of "(on Turkmen territory."

--Article 112's text, which previously affirmed the president's authority over the nation's prosecutors, now states that the manner in which prosecutors are to be hired and fired and the terms of their service are to be determined by law. The previous language specified that prosecutors and the Prosecutor General were hired and fired by the president, which undermined the independence of the judiciary.

--The text in Article 117 was altered to state that constitutional changes will be adopted if more than half of those voting in a referendum support the change. Previous language stated that it had to be supported by more than half of the citizens who have the right to vote.

16. (SBU) COMMENT: The final document reflects a cautious and conservative approach by Turkmen officials to the recommendations made by the diplomatic community. Nevertheless, it is encouraging that the recommendations were reviewed and some were addressed with new language. A fair number of changes identified in the final version do improve on or clarify the ideas therein. Others have the potential

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to represent a step forward, if related pieces of legislation are revised in a positive way and are implemented. END
COMMENT.
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